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In re Application of :
BEGUINOT, Jean, et al. :
U.S. Application No.: 10/535,174 :
PCT No.: PCT/FR2003/003360 :
International Filing Date: 13 November 2003 :
Priority Date: 19 November 2002 :
Attorney's Docket No.: Q87983 :
For: WELDABLE COMPONENT OF :
STRUCTURAL STEEL AND METHOD OF :
MANUFACTURE :

DECISION ON PETITION
(37 CFR 1.181)

This decision is issued in response to the "Petition Requesting Restart of Action or Acceptance of Filing as Timely; and/or Refund Under Rule 26" filed on 17 March 2006. No petition fee is required.

BACKGROUND

On 13 November 2003, applicants filed international application PCT/FR2003/003360. The application claimed a priority date of 19 November 2002 and designated the United States. On 10 June 2004, a copy of the international application was transmitted to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB"). The deadline for payment of the basic national fee was 30 months from the priority date, i.e., 19 May 2005.

On 17 May 2005, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, among other materials, payment of the basic national fee and a translation of the international application into English.

On 20 October 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing the oath or declaration later than thirty months after the priority date was required.

On 17 March 2006, applicants filed the petition considered herein. The petition asserts that applicants never received the Notification Of Missing Requirements mailed 20 October 2005, only learning of such Notification by a review of the USPTO's PAIR site. Applicants have included with the present petition a response to the Notification of Missing Requirements (i.e., an executed declaration and the required surcharge payment) and the fee for the three-

month extension of time required for the 17 March 2006 submission to be considered a timely response to the Notification. The petition argues that, based on applicants' failure to receive the mailed Notification, re-mailing of the Notification of Missing Requirements is appropriate.

Applicants therefore assert that the three-month extension fee is unnecessary and that a refund of the extension fee is appropriate.

DISCUSSION

Section 711.03(c)(II) of the MPEP sets forth the requirements for a grantable petition to confirm the failure to receive an Office communication:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Here, the petition does not contain the required statement from the practitioner that "a search of the file jacket and docket records in our office indicates that the Office communication was not received." As for the docket records requirement, petitioner has attached a copy of the firm's mail log listing Office communications received from 20 October 2005 to 27 October 2005. However, this mail log is not sufficient to satisfy the docket records requirement. Rather, petitioner must provide a copy of the firm's office docket for the date on which a response to the Notification Of Missing Requirements would have been due, had the Notification been received (i.e., 20 December 2005).

Based on the above, applicants have failed to satisfy all the requirements for a grantable petition to confirm that the Notification Of Missing Requirements mailed 20 October 2005 was not received. A refund of the extension fee necessary for the 17 March 2006 submission to be considered a timely response to the Notification Of Missing Requirements would therefore be inappropriate.

It is noted that the declaration and surcharge payment filed with the present petition are a proper response to the Notification Of Missing Requirements.

CONCLUSION

Applicants have failed to adequately demonstrate that the Notification Of Missing Requirements mailed 20 October 2005 was not received. The three-month extension fee paid by applicants is therefore necessary for the 17 March 2006 to be considered a timely response to the

Notification Of Missing Requirements (and thereby avoid abandonment of the application). The petition for a refund of this extension fee is therefore **DISMISSED** without prejudice.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any such request must include the remaining requirements for a grantable petition demonstrating the failure to receive the Notification of Missing Requirements mailed 20 October 2005 (i.e., the required practitioner's statement and additional docket materials discussed above).

Please direct further correspondence with respect to this issue to Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

The application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 17 March 2006.



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